

RON A. PAULCHEL

IBLA 93-287

Decided August 6, 1996

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying petition for class I reinstatement of Federal oil and gas lease AA 49934-S.

Affirmed.

1. Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Termination

A holder of a noncompetitive oil and gas lease terminated by operation of law for failure to pay the annual lease rental timely is not entitled to a class I reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1994) where there is no showing that business, family, or physical problems had a specific causal relationship to the late payment.

APPEARANCES: Ron A. Paulchel, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Ron A. Paulchel has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 17, 1993, denying his petition for a class I reinstatement of oil and gas lease AA 49934-S, which had terminated by operation of law for failure to timely submit the annual rental of \$40 on or before November 1, 1992, the lease anniversary date. For reasons set forth below, we affirm.

Federal oil and gas lease AA 49934-S had been created, effective October 1, 1985, by a partial assignment from Robert B. McGovern to appellant out of base lease AA 49934. The new lease contained 40 acres described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 17, T. 7 S., R. 13 W., Kateel River Meridian. At the time that the assignment was approved, appellant was notified that the annual rental for the lease would continue to be due on or before November 1 of each year, as provided in the original base lease.

By letter dated February 10, 1993, BLM notified Paulchel that lease AA 49934-S had terminated because of untimely payment of the rental required and informed him of the standards which he would have to meet to obtain either class I or class II lease reinstatement as provided by 30 U.S.C. § 188(c) and (d) (1994). Paulchel responded to this notice by an undated letter informing BLM that his payment was late because "I was under the impression if I had the payment postmarked by the due date

I was on a timely amenity." He enclosed a check for \$25, presumably intending this to cover the nonrefundable filing fee for a class I reinstatement petition. ^{1/}

By decision dated March 17, 1993, BLM notified Paulchel that his petition for a class I reinstatement was denied. The decision noted that, while the rental payment had been due on or before November 1, 1992, appellant's rental payment had not been received until November 12, 1992, in an envelope which bore a November 9, 1992, postmark. Given these facts, BLM determined that appellant had failed to establish reasonable diligence sufficient to justify the grant of a class I reinstatement. Appellant subsequently appealed from this decision.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1994), provides that any lease on which there is no well capable of producing oil or gas in paying quantities "shall automatically terminate by operation of law" upon the failure of the lessee to pay rental on or before the lease anniversary date. Payment, in this context, means actual receipt by the designated payee of the funds. See, e.g., William F. Branscome, 81 IBLA 235 (1984). Since it is undisputed that the rental payment was not received until November 12, 1992, there is no question that the subject lease terminated under the statute.

Federal leases terminated for failure to timely submit the annual rental may, however, be reinstated under two separate provisions. Under the terms of the Act of May 12, 1970, 84 Stat. 206, as amended, 30 U.S.C. § 188(c) (1994), the Secretary was authorized to reinstate a lease if the rental payment was paid or tendered within 20 days after the due date and the lessee established that the failure to timely pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Reinstatement under the 1970 Act became generally known as class I reinstatement upon the adoption by Congress in 1983 of the provisions codified at 30 U.S.C. § 188(d) (1994), which allowed the reinstatement of leases not eligible for reinstatement under the provisions of the 1970 Act so long as the lessee could show that the failure to timely pay was "inadvertent." Reinstatement under the provisions of the 1983 Act were deemed to be class II reinstatements.

With the adoption of the 1983 Act, reinstatement became possible for virtually all lessees who had unintentionally failed to timely submit the annual rental for an oil and gas lease. See Torao Neishi, 102 IBLA 49 (1988). However, since both the cost and the terms of reinstatement are more onerous under class II, lessees generally prefer to obtain a class I reinstatement, and many lessees, including appellant herein, have failed to pursue a class II reinstatement even though it would clearly have been

^{1/} The \$25 fee required for a class I reinstatement should be contrasted with the \$500 filing fee required for a class II reinstatement.

obtainable. But, those who decline to seek reinstatement under class II must meet the considerably higher standards required under class I reinstatement. For appellant to succeed in the instant appeal, he must show not merely that his payment was late through inadvertence. Rather, he must establish either that he exercised reasonable diligence or that his failure to exercise reasonable diligence can be deemed "justifiable" as that standard has been refined in a multitude of Board decisions.

Commencing with its earliest adjudications under the 1970 Act, the Board has recognized that, assuming the lease rental was paid or tendered within 20 days of the anniversary date, a lessee could obtain reinstatement if he or she could show either that reasonable diligence had been exercised or that failure to exercise reasonable diligence could be deemed justifiable. See generally Louis Samuel, 8 IBLA 268 (1972), appeal dismissed, Samuel v. Morton, Civ. No. CV-74-1112-EC (C.D. Cal. 1975).

In applying this dual standard, the Board has consistently stressed that the reasonable diligence test is an objective standard. An individual has exercised reasonable diligence if, considering the normal delays in the transmittal of mail, the payment was sent in sufficient time to reach its required destination on or before the anniversary date of the lease. See, e.g., Torao Neishi, *supra*; Melvin P. Clarke, 90 IBLA 95 (1985); Louis Samuel, *supra*.

The justifiable test, on the other hand, is based on subjective considerations. Thus, the Department has held that, where circumstances have arisen beyond a lessee's control which prevented the exercise of reasonable diligence, the failure of the lessee to exercise the required diligence may be deemed justifiable. See, e.g., George Foster, 109 IBLA 82 (1989); NP Energy Corp., 72 IBLA 34 (1983); Louis Samuel, *supra*. More specifically, we have held that, where the evidence establishes that "the death or illness of the lessee or a member of lessee's close family occurred in immediate proximity to the anniversary date and was the causative factor for failure to tender the payment timely," the failure to exercise reasonable diligence may be deemed justifiable. Marian L. Kleiner, 129 IBLA 216, 218 (1994); see also Denise M. White, 120 IBLA 163 (1991); Joanne F. Bechtel, 76 IBLA 1 (1983). We note that the Department's bifurcated analysis of the 1970 reinstatement provision has received judicial approbation. See Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1032 (1981); Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981).

Applying these standards to the instant appeal, we note that, inasmuch as appellant's payment, which was due on November 1, 1992, was not received until November 12, 1992, in an envelope postmarked November 9, the evidence fails to establish that appellant exercised "reasonable diligence" within the meaning of the 1970 reinstatement provisions. Thus, if appellant's petition for a class I reinstatement is to be granted, it must be based on a finding that the failure to exercise reasonable diligence was "justifiable."

Before the Board, appellant essentially argues that a number of problems, business, personal, and physical, should serve as an adequate basis for reinstatement of lease AA 49934-S under class I. There is no denying that, from his description, appellant was undergoing considerable difficulties, but the problem with his petition is that he has failed to show that these events had the requisite proximity and causality to his failure to timely pay rent. Thus, despite the problems referenced by appellant, he managed to prepare his rent check on October 29, 1992, just prior to the rental due date. If the various problems were as disruptive as appellant suggests, it seems likely that check preparation would have been similarly impeded. See Joanne F. Bechtel, 76 IBLA 1, 3 (1983), and Albert R. Fairfield, 34 IBLA 132, 134 (1978).

In addition, there is a paucity of detail surrounding the events appellant offers as justification. In William F. Branscome, *supra* at 237, the Board held that a lessee who claimed that illness had caused his tardy payment had failed to demonstrate sufficient justification when the statement of reasons did not indicate the duration of the illness, its seriousness, or even its actual existence. As the Board noted, reliance on unsupported allegations invites abuse of the reinstatement regulations. Id.

With respect to appellant's claim of financial devastation, the Board has held that disruption in the conduct of business affairs contributing to the failure to pay rental timely will not justify late payment. See Clarence Souser, 108 IBLA 59, 60 (1989); Larry W. Ferguson, 81 IBLA 167, 169 (1984). In George Foster, 109 IBLA 82, 84 (1989), preoccupation with business matters was found to be insufficient to justify a tardy rental payment when the lessee neglected to order his business affairs in such a way as to ensure timely payment. Moreover, as we noted in Paul J. & Lydia R. Stivers, 93 IBLA 97 (1986), mere inability to pay the rental is not a justifiable reason for a late submission of the required payment. See also Peter T. Creamer, 22 IBLA 175 (1975).

While family concerns were found to be sufficient justification in Billy Wright, 29 IBLA 81 (1977), the lessee in that case claimed that late payment was directly caused by the illness of his brother. At the time of the lease anniversary, the brother was suffering from a terminal illness, underwent surgery, and died in several weeks time, causing the lessee to be unable to give full attention to his business affairs. Accompanying the reinstatement petition were an affidavit of admittance to the treating hospital and a death certificate, both of which corroborated the lessee's statements.

In contrast to Wright, appellant does not offer supporting evidence to corroborate his assertions. Appellant asserts that the breakup of his marriage caused the late payment, but no specific indication exists in the record when the breakup occurred. Extenuating circumstances must be proximate in time to the lease anniversary date and must be the causative factor in the failure to exercise reasonable diligence in mailing the rental payment. Louis Samuel, *supra* at 274. Without more, appellant has not demonstrated that his lack of reasonable diligence was justifiable.

Appellant also claims that a nervous breakdown and other health problems were contributing factors. While in Sandra Lewis, 113 IBLA 174 (1990), the lessee's episodic clinical depression was found to provide justification for a tardy payment of rent, the lessee submitted a doctor's statement evidencing the severity of the condition and showing its proximity and causality to the late payment. By way of contrast, however, in William H. Siegfried, 135 IBLA 155 (1996), the Board declined to grant a class I reinstatement premised on chronic depression in the absence of a showing of a specific causal link to the failure to exercise reasonable diligence. In the instant case, appellant's petition lacks the detail and corroboration present in Lewis, relying on generalized statements of the type found insufficient in Siegfried. In the absence of evidence establishing a direct causal connection between the illness and the late payment of rent, late payment is not justified. William L. McCullough, 18 IBLA 97, 98 (1974).

Appellant's statement of reasons has been examined carefully, but the arguments presented are insufficient to demonstrate justification within the confines of established precedent. Accordingly, we must conclude that BLM correctly denied the petition for class I reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur.

Gail M. Frazier
Administrative Judge

